

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA and
STATE OF ILLINOIS,

Plaintiffs,

v.

CHICAGO SPECIALTIES, L.L.C.,

Defendant.

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CONSENT DECREE

WHEREAS, Plaintiff, the United States of America ("United States"), by authority of the Attorney General of the United States, acting at the request of the Administrator of the Environmental Protection Agency ("U.S. EPA"), filed a complaint in this action, alleging that Defendant violated the Clean Air Act, the Clean Water Act and the Resource Conservation and Recovery Act at the chemical production facility at 735 E. 115th Street in Chicago, Illinois;

WHEREAS, Plaintiff, the State of Illinois ("State"), by authority of the Attorney General of the State of Illinois, acting at the request of the Illinois Environmental Protection

Agency, filed a complaint in this action, alleging that Defendant violated Sections 9(a), 9(b), 12 and 21(f) of the Illinois Environmental Protection Act, 415 ILCS 5/9(a), 5/9(b), 5/12 and 5/21(f) (2000), and various provisions of 35 Ill. Adm. Code, Parts A through H at the chemical production facility at 735 E. 115th Street in Chicago, Illinois;

WHEREAS, the Plaintiffs and Defendant agree that settlement of the aforesaid claims without further litigation is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving these matters;

WHEREAS, settlement and entry of this Consent Decree does not constitute admission or acknowledgment of liability by Defendant, nor does it constitute adjudication by the Court of any issue or fact or law except as provided in paragraph 33 herein, but is intended solely to settle all claims asserted between the Plaintiffs and Defendant on the terms set forth herein;

NOW THEREFORE, upon consent and agreement of the Plaintiffs and Defendant, and of PMC, Inc., acting as guarantor of certain obligations of the Defendant, and the Court having considered the matter and being duly advised,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION

1. This Court has jurisdiction of the subject matter of this action and over the parties hereto. The pleadings state claims upon which relief may be granted against Defendant.

II. DEFINITIONS

2. "Settling Defendant" shall mean Defendant Chicago Specialties, L.L.C.

3. "Facility" shall mean the chemical manufacturing plant and associated operations located at 735 E. 115th Street in Chicago, Illinois.

4. "Para-cresol Process" shall mean those chemical processes utilized in the manufacture of para-cresol, mononitroparacresol ("MNPC"), and dinitroparacresol ("DNPC") and shall include, but not be limited to, the receipt and storage of raw materials for the sulfonation process, the ammonia refrigeration and brine system, and the acid scrubber. "Para-cresol Process" shall also mean the intermediate processes consisting of sodation, springing, and fusion. Further, "Para-Cresol Process" shall include the afterburner with all ductwork and sheet-metal work associated with the odor control system, all of the processing equipment, piping, valves, vessels and heat exchangers, as well as any hazardous or special waste storage and disposal activities, associated with the paracresol, MNPC and

DNPC processes, the cyanide wastewater treatment system and the creosote wastewater product recovery system.

5. "Plaintiffs" shall mean the United States of America and the State of Illinois.

6. "State Consent Order" shall mean the complementary Consent Order to be entered in People v. PMC, Inc., et al., No. 97 CH 09767 (Circuit Court of Cook County), which is attached as Appendix A.

7. "Sulfonation process" shall mean the process conducted in Annex J of Building 650 at the Facility by which toluene, sulfur trioxide, sulfur dioxide and acetic acid are reacted to produce toluene sulfonic acid for use in the manufacture of para-cresol.

8. Except as otherwise set forth herein, terms used in this Consent Decree that are defined in Sections 112(a) and 302 of the Clean Air Act, 42 U.S.C. §§ 7412(a) and 7602, or in 40 C.F.R. Parts 63 and 70; Section 311 of the Clean Water Act, 42 U.S.C. § 1321 or in 40 C.F.R. Part 112; Section 1004 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903 or in 40 C.F.R. Parts 260, 261, 265 and 270; and of the Illinois Environmental Protection Act, 415 ILCS Sections 5/1 et seq. (2000) or in Parts A through H of 35 Ill. Adm. Code, shall have the meaning contained therein. References to statutes and

regulations in this Consent Decree shall also include any amendments thereto.

III. APPLICATION AND SCOPE

9. Unless otherwise specified herein, the requirements of this Consent Decree apply to and are binding upon the Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status of the Settling Defendant, including but not limited to, any transfer of all or substantially all of the assets or real or personal property of Settling Defendant, shall in no way alter Settling Defendant's responsibilities under this Consent Decree. Settling Defendant shall notify U.S. EPA and the State within at least 10 days of any transfer of ownership of the Facility to any other entity. Any such transferee shall be bound by the provisions of this Consent Decree and the State Consent Order, and Settling Defendant shall provide written notice to any such transferee of its obligations under this Consent Decree and the State Consent Order. This Consent Decree shall apply to and be binding upon PMC, Inc., and its successors and assigns, to the extent set forth herein.

IV ACTIONS TO BE PERFORMED BY SETTLING DEFENDANT

10. Settling Defendant certifies that by March 31, 2001, it permanently ceased receiving at the Facility any raw

materials and organic intermediates that could be used for manufacture of para-cresol at the Facility.

11. Settling Defendant certifies that by April 30, 2001, it permanently shut down the Sulfonation process and MNPC and DNPC processes at the Facility.

12. Settling Defendant agrees that, effective immediately, it shall cease any and all operation of the Para-cresol Process and the afterburner associated with that process at the Facility.

13. Settling Defendant agrees that, effective immediately, it shall forever cease, and shall never resume, manufacture of para-cresol and its related intermediary products (including, but not limited to, MNPC and DNPC) within the State of Illinois. Settling Defendant further agrees that it shall not sell, lease or otherwise transfer the Facility, including but not limited to Building 650, used in the manufacture of para-cresol to any other person for use in the manufacture of para-cresol or its related intermediary products.

14. While the commitments made by the Settling Defendant in Paragraphs 10 - 13 of this Consent Decree are binding and enforceable under this Consent Decree, these commitments are the result of a business decision by the Settling Defendant and are not mandated to resolve the violations cited in the Complaints filed by the Plaintiffs in this matter.

15. a. Settling Defendant has submitted, and U.S. EPA and the State have approved a decommissioning plan and schedule for shutdown and dismantling of the Para-cresol Process and other associated activities, which is incorporated into this Consent Decree and is attached hereto as Appendix B. Settling Defendant shall implement the decommissioning plan and schedule as approved by U.S. EPA and the State. The approved decommissioning plan includes a report describing in detail the shut down of the Sulfonation process and MNPC and DNPC processes at the Facility. Upon request by U.S. EPA and the State, Settling Defendant shall provide further information to assure that this portion of the decommissioning plan describes how these processes were terminated, how all associated equipment was purged, flushed and cleaned, and whether all activities were conducted in a manner protective of human health and the environment and in compliance with all applicable laws and regulations. Upon request by U.S. EPA and the State, Settling Defendant shall also provide further information to assure that this portion of the decommissioning plan includes the dates on which such activities were conducted, and includes copies of all reports, manifests and other documents prepared by the Facility describing those activities.

b. All decommissioning activities shall be: (1) protective of human health and the environment; (2) in compliance

with all applicable State and Federal laws and regulations, including, but not limited to, all requirements applicable to hazardous waste generators under 40 C.F.R. Part 262 and all applicable closure and corrective action requirements under RCRA, the Illinois Environmental Protection Act, and the regulations adopted thereunder; and (3) consistent with good engineering practices and appropriate industry or technical standards.

c. The Parties recognize that the Settling Defendant may elect to: (1) sell and/or remove some or all of the equipment related to the Para-cresol Process; and/or (2) reuse some or all of the equipment for other purposes at the Facility. All such activities shall comply with the provisions of the approved decommissioning plan and the State Consent Order, including provision of a minimum of 90 days advance notice to U.S. EPA and the State before any auction or other sale or transfer of such equipment and compliance with all legal requirements when any or all of the structures housing the Para-cresol Process are demolished. Though Settling Defendant may reuse its equipment at the Facility, Settling Defendant shall not reuse equipment from the Para-cresol Process at the Facility in any manner involving the use of 20% or more of the listed threshold amount of any Risk Management Plan/Process Safety Management ("RMP/PSM")-listed chemical (see 40 C.F.R. Part 68) without the prior review and approval of U.S. EPA and the State. U.S. EPA and the State shall

have discretion to withhold their approval of the anticipated reuse, but shall not unreasonably withhold such approval. Settling Defendant shall have the right to seek judicial intervention should U.S. EPA and the State not tender their decision on the review within 90 days after Settling Defendant submitted all items to U.S. EPA and the State required for their review.

16. Settling Defendant certifies that it is currently in compliance with all requirements of the Clean Air Act, the Clean Water Act, and RCRA, and with the Illinois Environmental Protection Act, 415 ILCS Sections 5/1 et seq. (2000), and regulations adopted thereunder, except to the extent that actions described herein will bring them into compliance with these requirements.

17. Settling Defendant agrees that it and its affiliated corporate entities shall not seek, sell or transfer any Emission Reduction Management System credits that they might otherwise be able to claim as a result of any of the shutdown activities described in Paragraphs 10-15 above.

18. Settling Defendant agrees that it will attend and participate in a meeting with community members to explain the actions it will take pursuant to this Consent Decree and the State Consent Order. Settling Defendant shall conduct a meeting with members of the community concerning this Consent Decree, the

State Consent Order, and environmental compliance at the Facility. Such meeting shall be coordinated by the Southeast Environmental Task Force, in consultation with the U.S. EPA, Illinois EPA, the Illinois Attorney General's Office, the City of Chicago Department of the Environment, People for Community Recovery, Pullman Civic Organization, New Directions (Roseland area), South Deering Empowerment Association, Hegewisch Chamber of Commerce, Economic Youth Organization, Greater Roseland District Health Council, Citizens for a Better Environment, and any successor citizen group to these listed above. This meeting shall be scheduled for a date no later than April 30, 2002, at a time and upon conditions agreed to by Settling Defendant, the U.S. EPA, Illinois EPA, Illinois Attorney General's Office, the City of Chicago Department of the Environment, and the Southeast Environmental Task Force. Settling Defendant shall provide public notice of this meeting and notice to all of the entities with which it has coordinated and consulted under this paragraph, at least 14 days prior to its occurrence. Settling Defendant recognizes that representatives of the Plaintiffs may attend that meeting.

V. SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPs)

19. Settling Defendant shall conduct Supplemental Environmental Projects ("SEPs") at a cost of \$310,000. Those SEPs are: (1) within eight (8) months of entry of the Consent Decree,

Settling Defendant shall provide at least \$75,000 in funding for, followed by implementation of, a wetland restoration project which shall include any necessary acquisition of property or acquisition of a conservation easement, and the enhancement and maintenance of wetlands, aquatic property, semi-aquatic property, or prairie containing waterways, appropriate for preservation as wetlands or wildlife habitat, in the Lake Calumet area of Chicago. The acquired property or conservation easement and the method of acquisition shall be approved by U.S. EPA and the State, and shall be used for the purpose of creating new environments, enhancing existing environments, or protecting, restoring, and improving wildlife habitat and water quality; (2) within one year after entry of this Consent Decree, Settling Defendant shall commit to either resume or to permanently abandon the Isophthalonitrile ("IPN") process at the Facility and shall notify U.S. EPA and the State of that decision in writing. In the event Settling Defendant provides notice that it plans to resume the IPN process at the Facility, within nine (9) months of that notice Settling Defendant shall install an ammonia leak detection system at the Facility and bring that system into operation prior to resuming operation of the IPN process; and (3) within two (2) years of entry of this Consent Decree, Settling Defendant shall provide \$235,000 (less the amount of any funds expended on any ammonia leak detection SEP) in funding for,

followed by implementation of, a wetland restoration project which shall include any necessary acquisition of property or acquisition of a conservation easement, and the enhancement and maintenance of wetlands, aquatic property, semi-aquatic property, or prairie containing waterways, appropriate for preservation as wetlands or wildlife habitat, in the Lake Calumet area of Chicago. The acquired property or conservation easement and the method of acquisition shall be approved by U.S. EPA and the State, and shall be used for the purpose of creating new environments, enhancing existing environments, or protecting, restoring, and improving wildlife habitat and water quality. Any formal public statement, oral or written, made by Settling Defendant making reference to the SEPs shall include the following language: "These projects were undertaken in connection with the settlement of enforcement actions taken by the U.S. EPA and the State of Illinois for alleged violations of environmental laws".

20. Subject to the provisions in Section IX (Force Majeure): (a) if the ammonia leak detection system SEP is implemented it shall be designed and fully installed and operational within 9 months after the Settling Defendant provides written notice that it plans to resume operation of the IPN process at the Facility; (b) all funding for the first step of the wetlands restoration project SEP shall be provided within 8

months of the effective date of this Consent Decree; and (c) all remaining funding for the wetlands restoration project SEP shall be provided within 2 years of the effective date of this Consent Decree. The total cost of the ammonia leak detection system shall not exceed \$75,000 unless otherwise agreed to in writing by the Plaintiffs. If at any time prior to the completion of construction of the ammonia leak detection SEP, Settling Defendant decides instead to permanently shut down the IPN process at the Facility, Settling Defendant shall notify the Plaintiffs in writing of its intent to do so within 5 business days, and within 30 calendar days shall provide an accounting of all costs incurred in the implementation of the ammonia leak detection SEP. Thereafter, Settling Defendant shall devote all remaining SEP expenditures to the wetlands restoration SEP.

21. a. Within forty-five (45) days after the Settling Defendant provides written notice that it plans to resume the IPN process at the Facility, Settling Defendant shall submit a proposed plan and schedule for the implementation of the ammonia leak detection system SEP. The plan and schedule shall be submitted for review and approval by U.S. EPA and the State in accordance with Section VI of this Consent Decree. Settling Defendant shall implement the plan and schedule, in accordance with Section VI of this Consent Decree, as approved by U.S. EPA and the State. The proposed plan and schedule shall include, at

a minimum, provisions regarding the acquisition, installation, operation and maintenance of the ammonia leak detection system; retention of a licensed professional engineer to design the ammonia leak detection system; notification of site personnel and notification and coordination of response with response centers (including the National Response Center, Illinois Emergency Management Agency, and Local Emergency Planning Commission), as required by regulation. The ammonia leak detection system shall be designed so that it will be sufficient to monitor for leaks from any sources associated with the IPN System containing anhydrous ammonia.

b. Within forty-five (45) days after the effective date of this Consent Decree, Settling Defendant shall provide the U.S. EPA and the State with a proposed plan and schedule for the implementation of the wetland restoration SEP. Settling Defendant's proposed plan and schedule, including, but not limited to, provisions regarding the acquisition, enhancement and maintenance of the wetlands, and the selection of project manager(s) to direct the work, shall be implemented by Settling Defendant, in accordance with Section VI of this Consent Decree, following review by, and as approved by, U.S. EPA and the State. Any property that is restored pursuant to this Section shall be held by the current and future owners consistent with the purposes of this Section and shall be maintained in perpetuity as

wetlands or wildlife habitat, and Settling Defendant shall arrange for all necessary institutional controls.

22. SEP Report. Within thirty (30) days of the date on which each of the SEPs described in Paragraphs 18-20 above is completed, Settling Defendant shall provide to U.S. EPA and the State a SEP Report that shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. Copies of manifests for hazardous or special waste disposal;

- c. An accounting, certified by the appropriate responsible corporate officer of Settling Defendant, as set out in Paragraph 23 below, of all costs incurred for the purpose of implementing the SEP. Such accounting shall include copies of the receipts, purchase orders, or other verification of the expenditures for the implementation of the SEP; and

- d. A description of the environmental and public health benefits resulting from implementation of the SEP.

23. Settling Defendant, by a responsible corporate officer, shall sign and certify the SEP Report as follows:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information.

24. Settling Defendant shall submit each SEP Report in the manner prescribed in Section XVII.

25. Following receipt of a SEP Report described in Paragraph 22 above, U.S. EPA and the State will provide in writing to Settling Defendant notification that either: (i) they accept the SEP Report; or (ii) they reject the SEP Report, and provide a statement of the bases for its rejection. Upon receipt of rejection notification, Settling Defendant shall have thirty (30) days in which to correct any deficiencies.

26. If U.S. EPA or the State elects to exercise option (ii) in Paragraph 25 above, they shall permit Settling Defendant the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this Paragraph within ten (10) days of receipt of such notification. The U.S. EPA, the State and Settling Defendant shall have an additional thirty (30) days from the receipt by U.S. EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, U.S. EPA or the State shall provide a written statement of its decision on adequacy or inadequacy of the completion of the SEP to the Settling Defendant, which decision shall be final and binding upon Settling Defendant. In the event the SEP is not completed as described in Section IV, above, as determined by U.S. EPA or the

State, stipulated penalties shall be due and payable by Settling Defendant to U.S. EPA and the State in accordance with Section VIII below.

VI. REVIEW OF SUBMISSIONS

27. Except as provided in Paragraph 25, after review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, U.S. EPA and the State shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) disapprove, in whole or in part, the submission; or (d) any combination of the above.

28. In the event of approval or approval upon conditions by U.S. EPA and the State, pursuant to Paragraph 27(a) or (b), Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved by U.S. EPA and the State subject only to its right to invoke the Dispute Resolution procedures set forth in Section X with respect to any conditions made by U.S. EPA and the State. U.S. EPA and the State shall retain their rights to seek stipulated penalties, as provided in Section VIII.

29. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 27(c), Settling Defendant shall, within ten (10) days or such longer time as specified by U.S. EPA or the State in

such notice, correct the deficiencies and resubmit the plan, report, or other item for review and approval. Any stipulated penalties applicable to the submission, as provided in Section VIII, shall accrue during the 10-day or otherwise specified period but shall not be payable unless the resubmission is disapproved as provided in Paragraph 29(c).

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 27(c), Settling Defendant shall proceed, at the direction of U.S. EPA and the State, to take any action required by any portion of the submission which has not been disapproved. Such implementation of any portion of a submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section VIII.

c. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by U.S. EPA or the State, U.S. EPA or the State may again require the Settling Defendant to correct the deficiencies, in accordance with the preceding Paragraphs.

d. All plans, reports, and other items required to be submitted to U.S. EPA and the State under this Consent Decree shall, upon approval or approval with conditions by U.S. EPA and the State, be incorporated by reference into and be enforceable under this Consent Decree. In the event U.S. EPA and the State approve a portion of a plan, report, or other item required to be

submitted to U.S. EPA and the State under this Consent Decree, the approved portion shall be incorporated by reference into and be enforceable under this Consent Decree.

VII. CIVIL PENALTY

30. Settling Defendant shall pay a total civil penalty of \$50,000 plus interest to the United States. Within sixty (60) days of entry of this Consent Decree, Settling Defendant shall pay an initial installment of \$25,000. Within one year of the entry of this Consent Decree, Settling Defendant shall pay the remaining principal amount of \$25,000 plus interest on the total outstanding principal balance from the date of entry of the Consent Decree to the date of payment, calculated at the interest rate provided in 28 U.S.C. §1961. Such payments shall be in full satisfaction of the United States' claims for a civil penalty against the Settling Defendant for the violations alleged in the Complaint filed in this action through the date of lodging of this Consent Decree. Penalty payments made under this Consent Decree are not tax deductible.

31. Settling Defendant's payments to the United States of the amounts set forth in Paragraph 30 shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the United States Department of Justice ("DOJ") lock box bank, referencing DOJ No. 90-5-2-1-06918 and USAO File No. _____. Payment shall be made in accordance with the instructions provided by the

United States. EFTs must be received at the DOJ lock box bank by 11:00 A.M. (eastern time) in order to be credited on that day. Settling Defendant shall advise the Financial Litigation Unit of the United States Attorneys Office for the Northern District of Illinois at the time payment is being wire-transferred. A copy of the transmittal notice shall be mailed to each party identified in Section XVII (Notices, Records, and Submissions) of this Consent Decree.

32. Settling Defendant shall pay a civil penalty of \$50,000 plus interest to the State of Illinois, in the manner provided in the State Consent Order, and shall reimburse the State for \$71,000 in costs, under the terms of the State Consent Order.

33. If the Settling Defendant does not pay the civil penalty, as specified in Paragraphs 30 and 32 of this Consent Decree, when due, then without further order of this Court, this Consent Decree shall be considered an enforceable judgment in favor of the United States and/or the State, as appropriate, for purposes of post-judgment collection under Rule 69 of the Federal Rules of Civil Procedure and other applicable statutory authority. For purposes of Sections 39(i) and 42(h) of the Illinois Environmental Protection Act, 415 ILCS 5/39(i) and 5/42(h) (2000), this Consent Decree may be used in any future permit proceeding or enforcement action commenced against the

Settling Defendant by the State as evidence of a past adjudication of violations of the Illinois Environmental Protection Act.

VIII. STIPULATED PENALTIES

34. If the Settling Defendant fails to comply with any provision of this Consent Decree, it shall pay stipulated penalties according to the provisions set forth below:

a. If the SEPs identified in Section V herein have been completed according to the applicable schedules, but the total cost is less than \$310,000, Settling Defendant shall pay, as a stipulated penalty to be divided equally by the United States and the State of Illinois, a sum equal to one third of \$310,000 (minus the value of the completed SEPs), up to \$100,000;

b. For each failure to submit any plan or report required in this Consent Decree by the required date and for each failure to meet any deadline in any plan approved by U.S. EPA and the State, except where Settling Defendant demonstrates that such failure was wholly caused by a third party contractor, Settling Defendant shall pay a stipulated penalty as follows:

Period of <u>Non-Compliance</u>	<u>1-30 days</u>	<u>30-60 days</u>	<u>60 or more days</u>
	\$500/day	\$1000/day	\$1500/day

35. If the SEPs have not been completed according to the schedule in the Consent Decree or plan, but the total of the incurred SEP costs equals \$310,000 on the scheduled completion

date, Settling Defendant may ask U.S. EPA and the State to determine that the SEPs have been completed.

36. The determination of whether the SEPs have been satisfactorily completed by the Settling Defendant shall be in the sole discretion of U.S. EPA and the State. U.S. EPA's and the State's approval of the Settling Defendant's implementation of the SEPs shall not be unreasonably withheld.

37. Stipulated penalties shall be paid within fifteen (15) days of written demand by U.S. EPA or the State for such penalties. One half of the stipulated penalties owed shall be paid, by cashier's or certified check made payable to "Treasurer, United States of America," and shall be sent to:

United States Attorney's Office
Northern District of Illinois
Attention: Collections
219 South Dearborn Street
Chicago, Illinois 60604

One half of the stipulated penalties owed shall be paid by certified check or money order payable to the Illinois EPA, designated to the Environmental Protection Trust Fund, and shall be sent to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9876

The name, case number and Settling Defendant's Federal Employer Identification Number (95-4716166) shall appear on the face of the check or money order.

38. Stipulated penalties shall accrue on the first business day after complete performance is due or the day on which a violation begins. Stipulated penalties shall continue to accrue through the final day of correction of the noncompliance. If Settling Defendant fails to comply with any requirement contained in this Consent Decree, Settling Defendant shall be liable for stipulated penalties assessed cumulatively for each such missed deadline or instance of non-compliance according to the provisions of Paragraph 34 above. These stipulated penalties shall not be the sole remedy U.S. EPA or the State may seek for non-compliance with this Consent Decree. Such other remedies may include actions for contempt and/or to enforce this Consent Decree. Failure by U.S. EPA or the State to give notice of either the violation of this Consent Decree or the assessment of stipulated penalties shall not act as a waiver of Settling Defendant's obligation to pay said stipulated penalties.

39. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree and the State Consent Order. To the

extent the State seeks to collect stipulated penalties under the State Consent Order, U.S. EPA and the State agree not to pursue stipulated penalties for the identical violation under this Consent Decree.

40. The payment of stipulated penalties shall not alter in any way the Settling Defendant's obligations under this Consent Decree and nothing in this Consent Decree shall preclude the Plaintiffs from seeking any additional legal or equitable relief, including, but not limited to, injunctive relief, civil penalties, and civil or criminal contempt sanctions, for any violation of the Clean Air Act, the Clean Water Act, RCRA, or the Illinois Environmental Protection Act, other than those violations which are the subject of this action.

IX. FORCE MAJEURE

41. If any event occurs which causes or may cause a delay in the achievement of compliance with any requirement of this Consent Decree, the Settling Defendant shall notify U.S. EPA and the State in writing within seven (7) days of when Settling Defendant knew, or with the exercise of reasonable care should have known, of the event. The notice shall refer to this section of the Consent Decree and describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Settling Defendant to prevent or minimize the delay, the timetable pursuant to which

those measures shall be implemented, and whether the Settling Defendant believes that the event which causes or may cause the delay constitutes a force majeure. The Settling Defendant shall adopt all reasonable measures to avoid or minimize any such delay. Increased costs of performance do not, in and of themselves, constitute force majeure under this Section.

42. If the U.S. EPA and the State, agree that a violation has been or will be caused solely by circumstances beyond the control of the Settling Defendant or any entity controlled by the Settling Defendant, including its contractors, and the Settling Defendant could not have foreseen or prevented such delay by exercise of due diligence, U.S. EPA and the State shall extend the time for compliance with the particular requirement(s) affected by the force majeure by a period not exceeding the delay actually caused by the circumstances, as determined by the Parties. Settling Defendant shall not be liable for stipulated penalties for the period of any such delay. Such extension shall not alter the schedule for any other part of this Consent Decree, except that U.S. EPA and the State shall extend the time for performance of other tasks under this Consent decree that U.S. EPA and the State determine will necessarily be delayed as a result of the force majeure.

43. If U.S. EPA and the State do not agree with the Settling Defendant's claim of force majeure, the Settling

Defendant may invoke the Dispute Resolution procedures of this Consent Decree (Section X). In any Dispute Resolution proceeding, if the Court ultimately determines that the violation has been or will be caused solely by circumstances beyond the control of the Settling Defendant or any entity controlled by the Settling Defendant, including its contractors, and that the Settling Defendant could not have foreseen and prevented such delay by exercise of due diligence, the Settling Defendant shall be excused as to that violation and delay (including Stipulated Penalties (Section VIII)), but only for the delay actually caused by such circumstances.

• **X. DISPUTE RESOLUTION**

44. Unless otherwise expressly provided for in this Consent Decree, the Settling Defendant shall have the right to dispute any decision of U.S. EPA or the State under this Consent Decree, and the provisions of this Section shall be the exclusive mechanism to resolve disputes arising under this Consent Decree.

45. Any dispute that arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute

shall be considered to have arisen when one party sends written Notice of Dispute to the other parties.

46. If the parties cannot resolve a dispute under this Consent Decree by informal negotiations under the preceding Paragraph, then the position advanced by U.S. EPA and/or the State shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, the Settling Defendant invokes the formal dispute resolution procedures of the Section by serving on U.S. EPA and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position, any supporting documentation relied upon by the Settling Defendant, and any action that the Settling Defendant considers necessary to resolve the dispute.

47. An administrative record of the dispute shall be maintained by the U.S. EPA, in consultation with the State. The administrative record shall include the Statement of Position and all of the information provided by the Settling Defendant pursuant to the preceding Paragraph, as well as any other documents relied upon by U.S. EPA and the State in making a final decision pursuant to the next Paragraph.

48. If U.S. EPA and the State concur with the Settling Defendant's position, U.S. EPA shall provide written notice of

such concurrence to the Settling Defendant. If U.S. EPA or the State do not concur with the Settling Defendant's position, U.S. EPA or the State shall so notify the Settling Defendant in writing, setting forth the basis for its decision. The decision of U.S. EPA or the State shall control unless, within fifteen (15) days after the receipt of the written determination, the Settling Defendant files a notice of judicial appeal that shall set forth a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. U.S. EPA or the State may file a response to the notice of judicial appeal.

49. In any such judicial appeal, the Settling Defendant shall have the burden of demonstrating that the position of U.S. EPA or the State is arbitrary and capricious or otherwise not in accordance with law. The Court shall base its decision on the administrative record. The Court may grant relief, or may, upon motion of either party or on its own motion, remand the dispute for further consideration by U.S. EPA or the State, as appropriate, including supplementation of the administrative record as appropriate.

50. The invocation of formal dispute resolution procedures under this Section shall not of itself extend or

postpone any of the Settling Defendant's obligations under this Consent Decree, but the payment of stipulated penalties with respect to the disputed matter shall be stayed pending the resolution of the dispute.

XI. ACCESS

51. During the duration of this Consent Decree, U.S. EPA and State environmental inspectors or representatives and their authorized contractors and representatives may enter on, through and about the site of the Facility subject to this Consent Decree at all reasonable times, to observe, take samples and photographs, and inspect and copy such records as may be necessary to determine compliance with the provisions of the Consent Decree. This right of access is in addition to and is not a limitation on the rights of access afforded by any statute, regulation or other law. For purposes of this Section, "State" shall include the Illinois EPA and the Illinois Attorney General's Office.

XII. FINANCIAL ASSURANCE

52. Notwithstanding the liability of the Settling Defendant to comply with the provisions of this Consent Decree, PMC, Inc. agrees to guarantee the following obligations of the Settling Defendant under this Consent Decree and under the State Consent Order: (1) payment for the preparation of the SEP plans required under this Consent Decree; (2) payment for the

performance of SEPs described in Section V above and in the State Consent Order; (3) payment of civil penalties described in Section VII above and in the State Consent Order; and (4) payment of costs required in the State Consent Order. Moreover, notwithstanding the liability of the Settling Defendant to comply with the provisions of this Consent Decree, PMC, Inc. agrees to guarantee payment of up to \$200,000 for performance of activities required under the approved decommissioning plan described in Paragraph 15 above. In order to implement these guarantees, PMC, Inc. may be required to, among other things: (1) assume the contractual payment obligations of the Settling Defendant in the event of Settling Defendant's default on or rejection of contractual obligations; and (2) in the event that U.S. EPA and the State determine that Settling Defendant is unable to perform the activities required under the approved decommissioning plan described in Paragraph 15 above, arrange for performance of up to \$200,000 worth of such activities either directly or by tendering the funds (either as payment or reimbursement) to the State, as the State directs and as permitted by law. These obligations shall extend to all corporate successors and assigns of PMC, Inc. The United States and the State agree not to pursue PMC, Inc. and its corporate successors and assigns directly for relief beyond the scope of these guarantees with respect to the violations

alleged in the Complaints in this action through the date of lodging for entry of this Consent Decree.

XIII. PLAINTIFF'S COVENANTS NOT TO SUE

53. This agreement resolves, and Plaintiffs covenant not to sue upon, all civil claims of the Plaintiffs against Settling Defendant for the violations alleged in the Complaints in this action through the date of lodging for entry of this Consent Decree. Plaintiffs agree that, upon completion of all required activities under this Consent Decree to the satisfaction of U.S. EPA and the State, the civil claims alleged in the Complaints which occurred through the date of lodging for entry of the Consent Decree shall be satisfied and released.

XIV. RESERVATION OF RIGHTS

54. Nothing in this Consent Decree shall limit the authority of U.S. EPA or the State to take any action against Settling Defendant in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment, or to limit application of the following: Section 303 of the Clean Air Act, 42 U.S.C. § 7603; Section 504 of the Clean Water Act, 33 U.S.C. § 1364; Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973; or Section 43 of the Illinois Environmental Protection Act, 415 ILCS 5/43(a) (2000). The United States and the State

reserve all rights to seek redress for future and heretofore undiscovered violations of applicable laws or regulations.

55. Except as provided in Paragraphs 52 and 53, nothing in this Consent Decree shall act as a bar, adjudication or resolution of any claims of the Plaintiffs. In any subsequent proceeding concerning claims that were not alleged in the Complaints, Settling Defendant (and PMC Inc. as guarantor) shall not assert any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant action.

56. This Consent Decree in no way affects or relieves the Settling Defendant of its responsibilities to comply with all applicable federal, state or local laws or regulations.

57. Subject to Section XIII, notwithstanding any other provision of this Consent Decree, nothing herein shall be construed to limit the right of the United States or the State to seek or obtain any remedy, sanction or relief that may be available to it by virtue of the Settling Defendant's failure to comply with this Consent Decree or to make accurate certifications thereunder, or by virtue of the Settling Defendant's failure to comply with the Clean Air Act, the Clean

Water Act, RCRA, the Illinois Environmental Protection Act, or any regulations promulgated thereunder.

58. Subject to Section XIII, notwithstanding any other provision of this Consent Decree, nothing herein shall be construed to limit the right of the United States or the State to seek or obtain any remedy, sanction or relief that may be available to them in the event that it is discovered that there exists surface and/or subsurface contamination at or attributable to the Facility that is not Environmental Contamination, as defined in the Partial Consent Order between the State and The Sherwin-Williams Company filed in People v. PMC, Inc., et al., No. 97 CH 09767 (Circuit Court of Cook County), and that is divisible from Environmental Contamination for remediation purposes.

XV. RETENTION OF JURISDICTION

59. The Court shall retain jurisdiction to modify and enforce the provisions of this Consent Decree, to resolve disputes arising hereunder, and to entertain any application and issue any order as may be necessary or appropriate for the construction and effectuation of its terms. Deadlines for performance of Settling Defendant's obligations under this Consent Decree, and the provisions of the approved plan and schedule for the wetlands restoration SEP, may be modified by written agreement of all Parties. Any other modification of the

terms of this Consent Decree must be in writing and agreed to by the parties and approved by the Court.

XVI. NOTICES, RECORDS, AND SUBMISSIONS

60. Except as otherwise provided herein, all notices, records and submissions required by this Consent Decree shall be in writing, shall be maintained by the Settling Defendant for the duration of the Consent Decree and shall be made available to U.S. EPA and the State upon request.

61. Unless a change of address notice is timely submitted or this Consent Decree states otherwise, all notices and/or submissions in connection with this Consent Decree shall be addressed as follows:

For U.S. EPA:

Attn: Compliance Tracker
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Avenue, AE-17J
Chicago, Illinois 60604

Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Avenue, C-14J
Chicago, Illinois 60604

For DOJ:

Bruce S. Gelber
Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

For the State:

James O'Brien
Office of Emergency Response
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

John Waligore
Assistant Counsel
Division of Legal Counsel
Illinois EPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Bernard J. Murphy, Jr., Assistant Bureau Chief
Environmental Bureau North
Assistant Attorney General
188 West Randolph Street, 20th Floor
Chicago, IL 60601

For Settling Defendant:

Kenneth T. Kristl, Esq.
Winston & Strawn
35 West Wacker Drive
Chicago, Illinois 60601-9703

John Stubbings
Chicago Specialties, LLC
735 East 115th Street
Chicago, Illinois 60628

For PMC Inc. as guarantor:

Mark Miller
Regulatory Affairs
PMC, Inc.
501 Murray Road
Cincinnati, Ohio 45217

62. The parties agree that final approval and entry of this Consent Decree is subject to the public notice requirement

of 28 C.F.R. § 50.7. The United States and the State reserve the right to withdraw their consent to the Consent Decree if the comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper or inadequate. The Settling Defendant, and PMC Inc. as guarantor, consent to the entry of this Consent Decree without further notice.

XVII. COSTS AND FEES

63. Each party shall bear its own costs, fees and disbursements in this action, provided, however, that nothing in this Consent Decree shall effect or impair any of the State's rights to reimbursement of costs under the State Consent Order.

XVIII. SIGNATORIES

64. Each of the undersigned representatives of the Settling Defendant and PMC Inc. certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally the party represented by him or her. The undersigned Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, also certifies that he is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally the United States to this agreement. The undersigned RoseMarie Cazeau, Bureau Chief for the Illinois Attorney General's Office's Environmental Bureau North and Joseph

E. Svoboda, Chief Legal Counsel for the Illinois Environmental Protection Agency, also certify that they are authorized to execute and bind legally the State of Illinois and the Illinois EPA to this agreement.

XIX. EFFECTIVE DATE

65. This Consent Decree shall become effective on the date of entry by the Court.

XX. OTHER PROVISIONS

66. The United States and the State shall be deemed judgment creditors for purposes of collection of any penalties owed them by the Settling Defendant under this Consent Decree.

67. In accordance with 28 U.S.C. § 1961, interest shall accrue on the unpaid balance of any penalties owed to U.S. EPA at the federal judgment interest rate. The rate shall be that in effect on the due date of the civil penalty provided for in Paragraph 30 above and, in the case of stipulated penalties, at the time such payment(s) become due. Interest shall be computed beginning the date the penalty in question is due. If interest is due, the Settling Defendant shall submit a statement with its payment to the Collections Unit of the U.S. Attorney's Office for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, setting forth its calculation of interest. The U.S. Attorney's Office will advise

the applicable Settling Defendant in the event such calculation requires adjustment.

Pursuant to Section 42(g) of the Illinois Environmental Protection Act, 415 ILCS 5/42(g) (2000), interest shall accrue on any penalty amount owed to the State and not paid within the time prescribed herein at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2000).

i) Interest on any unpaid penalty shall begin to accrue from the date the penalty payment is due and continue to accrue to the date the payment is received.

ii) Where partial payment is made on any payment amount that is due, such partial payment first shall be applied to any interest on unpaid penalties then owing.

iii) All interest on any penalty payment owed by Settling Defendant shall be made by certified check or money order payable to the "Illinois EPA," designated for deposit in the "Environmental Protection Trust Fund," and delivered to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

iv) The case name, case number, and Settling Defendant's FEIN shall appear on the face of the check or money order. A copy of the check or money order and the transmittal letter shall be sent to:

Bernard J. Murphy, Jr.
Assistant Bureau Chief
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
FAX 312-814-2347

John Waligore
Assistant Counsel
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

68. If the Settling Defendant files a voluntary petition in bankruptcy, or is adjudicated bankrupt under the Bankruptcy Code of the United States, or is the subject of a petition in federal or state court for the appointment of a trustee or receiver in bankruptcy or insolvency, or makes a general assignment for the benefit of creditors, immediate notice shall be given to the Collections Unit of the U.S. Attorney's Office, Chicago, Illinois, to U.S. EPA Office of Regional Counsel Region 5 at 77 West Jackson, Mailcode C-14J, Chicago, Illinois 60604, and to Bernard J. Murphy, Jr., Assistant Bureau Chief, Assistant Attorney General, Environmental Bureau, Illinois Attorney General's Office, 188 West Randolph Street, Suite 2001, Chicago, Illinois 60601. At the option of the United States or the State of Illinois, upon the occurrence of any of the above listed events, the full balance of all outstanding penalties and

SEP payments owed by the Settling Defendant under this Consent Decree and the State Consent Order, together with accrued interest, may be declared immediately due and payable.

69. This agreement, in conjunction with the State Consent Order in People v. PMC, Inc., et al., No. 97 CH 09767 (Circuit Court of Cook County), represents the entire agreement of the parties to this Consent Decree.

Entered this _____ day of _____, 2002.

United States District Court Judge

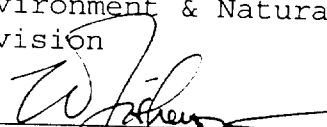
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America and State of Illinois v. Chicago Specialties, L.L.C., Civil Action No.

FOR THE UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF JUSTICE

THOMAS L. SANSONETTI
Assistant Attorney General
Environment & Natural Resources
Division

Date: _____



W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

Date: _____

ELLIOT M. ROCKLER
Trial Attorney
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044
(202) 514-2653

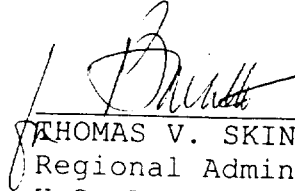
PATRICK J. FITZGERALD
United States Attorney
Northern District of Illinois

Date: _____

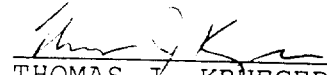
By: _____
Assistant United States Attorney
219 S. Dearborn St.
Chicago, Illinois 60604

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date: 12/13/02


THOMAS V. SKINNER
Regional Administrator
U.S. Environmental Protection Agency -
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604


Date: 12/21/02


THOMAS J. KRUEGER
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency -
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590


PEOPLE OF THE STATE OF ILLINOIS
ex rel. JAMES E. RYAN,
Attorney General of the

State of Illinois

Date: 4/22/02

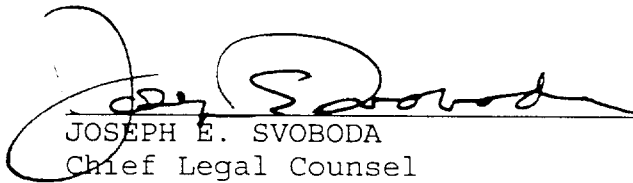

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

Date: 5/20/02


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

Date: 8-12-02


JOSEPH E. SVOBODA
Chief Legal Counsel

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America and State of Illinois v. Chicago Specialties, L.L.C., Civil Action No.

FOR SETTLING DEFENDANT

Date: October 17, 2002

Heidi Johnson

FOR PMC INC.

Date: October 17, 2002

Jan

